

U.S. District Court  
Middle District of TN

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as guaranteed under the Eighth Amendment and Fourteenth Amendment of the United States Constitution and the Ex Post Facto Clause by placing him under the Tennessee Sex Offender Registry Act which was enacted after his crimes were committed and by placing him on probation/parole after the expiration of his sentence.

*Parties*

3. The Plaintiff was previously incarcerated within the Tennessee Department of Correction on conviction when he was placed under the TSORA as related to this case.

4. Defendant David Rausch is the Tennessee Bureau of Investigation for the State of Tennessee and is responsible for the enforcement of the TSORA of the State of Tennessee. He is sued in his official capacity.

5. Defendant Richard Montgomery is the Chairman of the Tennessee Board of Parole and is responsible for the decisions and actions of the Tennessee Board of Parole. He is sued in his official capacity.

*Facts*

6. The Plaintiff was convicted of three counts incest in 11 May, 2005, and three counts of aggravated child abuse and eleven counts of rape in August, 2007, and where he served a total sentence of 17 years. He was placed under the TSORA for community supervision for life after release from incarceration on June 9, 2022.

7. Upon his release, Plaintiff was placed under parole by Defendant Richard Montgomery.

8. After his release on June 9, 2022, the Plaintiff under interstate compact agreement between Tennessee and Idaho, immediately traveled to his residence in Slagle, Idaho where he is presently residing.

9. After arrival in Idaho, the Plaintiff reported to his assigned probation officer with the Idaho Department of Correction. He was informed by Daniel Lorden, his probation officer that Tennessee had the Plaintiff listed as being on parole. Plaintiff explained that he was not on parole, but had expired his sentence.

10. Defendant Montgomery is unconstitutionally enforcing the law as applied to the Plaintiff because the Plaintiff has expired his sentence and is no longer “in custody” as being applied to him under parole conditions which are more restrictive than community supervision.

11. In essence, the Defendant has placed the Plaintiff on “parole” for life. Application of such a law is punitive as opposed to civil as applied to him.

12. Plaintiff is suffering actual injury in fact because the State of Idaho is applying the conditions of parole upon the Plaintiff which is restrictive on him securing employment, operating his established pilot car business, attending civic activities, leaving the state, and having access to the internet as a result of Defendant Montgomery’s actions.

13. Defendant David Rausch is maintaining the Plaintiff on the Tennessee Sex Offender Registry even though he is not a resident of Tennessee.

14. Defendant Rausch’s actions directed at the Plaintiff is used only for the shaming and reputational injury. Having the Plaintiff listed on the TSOR is in no way protecting the public. It is only punitive in nature and in violation of Plaintiff’s constitutional rights.

#### *Exhaustion of Administrative Remedies*

15. There are no administrative remedies available pertaining to the claims.

#### *Claims for Relief*

16. The actions of the Defendant Richard Montgomery is deliberate and maliciously listing the Plaintiff as being on parole when he has expired his entire sentence is a violation of the Eighth


and Fourteenth Amendments of the United States Constitution and is also cruel and unusual punishment under the Constitution.

17. The actions of the Defendant David Rausch in maliciously maintaining the placement of the Plaintiff under the TSORA is a violation of the Eight and Fourteenth Amendments of the United States Constitution.

*Requested Relief*

1. Issue a declaratory and injunctive order whereby this Court orders:
  - A. Defendant Richard Montgomery removes the Plaintiff from parole and notifies the State of Idaho immediately that Plaintiff is not on parole.
  - B. Defendant David Rausch to immediately remove the Plaintiff from the TSORA public registry since he is listed on the State of Idaho Sex Offender Registry.
2. Order directing the Defendant to pay all attorney fees and court costs associated with this Complaint.
3. Grant such other relief as it may appear that Plaintiff is entitled.

Respectfully submitted on this the 29 day of January, 2022.

  
Wayne Burkhart  
22 E Dufort Road  
Slagle, ID 83860

Wayne L. Burman v  
22 E Oufort Rd  
Sage Id. 83860

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FEB 07 2023

U.S. District Court  
Middle District of TN

Lynda M Hill  
Clerk of Court  
US District Court  
719 Church St Suite 1300  
Nashville TN 37203

SPokane PGDC 992  
WED 01 FEB 2023 PM

